

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 3

In the Matter of:

Starbucks Corporation, Case No. 03-RC-289785

Employer,

and

Workers United,

Petitioner.

Place: Buffalo, New York (Via Zoom Videoconference)

Dates: February 22, 2022

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UNITED STATES OF AMERICA
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STARBUCKS CORPORATION,

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and

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Case No. 03-RC-289785

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **THOMAS MILLER**, Hearing Officer, at the National Labor Relations Board, Region 3, 130 S. Elmwood Ave., Suite 630, Buffalo, New York 14202, on **Wednesday, February 22, 2022, 9:56 a.m.**



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A P P E A R A N C E S

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E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**Board:**

B-1 (a) through B-1 (i)

5

5

B-2

6

6

Employer:

E-1

12

Rejected

E-2

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Rejected

E-3

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Rejected

E-4

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Rejected

E-5

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Rejected

E-6

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Rejected

E-7

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Rejected

E-8

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Rejected

P R O C E E D I N G S

HEARING OFFICER MILLER: Okay. So the hearing will be in order. This is a formal hearing in the matter of Starbucks Corporation, case number is 03-RC-289785 before the National Labor Relations Board. The hearing officer appearing for the National Labor Relations Board is Thomas Miller.

All parties have been informed of the procedures at formal hearings before the Board by service of a description of procedures and certification and decertification cases with the notice of hearing. I have additional copies of this document for distribution if any party wants more.

Will Counsel, please, state their appearances for the record, and we'll start with the Petitioner, please.

MR. SPEAR: My name is Samuel L. Spear, Spear Wilderman, P.C., 230 South Broad Street, 14th Floor, Philadelphia, Pennsylvania 19102.

HEARING OFFICER MILLER: Are there any other appearances for the Petitioner.

MR. SPEAR: And with me are Sarah Tarlow and Vlad Kachka, who are attorneys in my firm.

MR. HAYES: I guess I'll -- I'll also note my appearance. Ian Hayes, Hayes Dolce, Buffalo, New York, for the Petitioner.

HEARING OFFICER MILLER: Okay. And for the Employer?

MR. MODEL: Sure. On behalf of the Employer from the firm Littler Mendelson, Alan Model, Marie Duarte, and Wiles.



1 HEARING OFFICER MILLER: Okay. Are there any other
2 appearances?

3 Let the record show no further response.

4 Are there any other persons, parties, or labor
5 organizations in the hearing room who claim an interest in this
6 proceeding?

7 Let the record show no response.

8 I now propose to receive the formal papers. They have
9 been marked for identification as Board Exhibit 1(a) through
10 1(i) inclusive, Exhibit 1(i) being an index and description of
11 the entire exhibit. This exhibit has already been shown to all
12 parties.

13 Are there any objections to the receipt of these exhibits
14 into the record?

15 MR. MODEL: No. There isn't.

16 MR. SPEAR: No.

17 HEARING OFFICER MILLER: Okay. Hearing no objection,
18 Board Exhibit 1, the formal papers are received into evidence.

19 **(Board Exhibit Number 1(a) through 1(i) Received into Evidence)**

20 HEARING OFFICER MILLER: Are there any motions to
21 intervene in these proceedings to be submitted to the hearing
22 officer for ruling by the Regional Director at this time?

23 Okay. Are the parties aware of any other employers or
24 labor organizations that have an interest in this proceeding?

25 MR. SPEAR: No. I'm not.

1 MR. MODEL: No.

2 HEARING OFFICER MILLER: Okay. The parties to this
3 proceeding have executed a document, which is marked as Board
4 Exhibit 2. That exhibit contains a series of stipulations,
5 including that the Petitioner is a labor organization within
6 the meaning of the Act, there's no contract bar to these
7 proceedings, and that the Employer meets the jurisdictional
8 standard of the Board among other stipulations.

9 Are there any objection to receipt of Board Exhibit 2 into
10 the record?

11 MR. SPEAR: No.

12 MR. MODEL: No.

13 HEARING OFFICER MILLER: Okay.

14 **(Board Exhibit Number 2 Received into Evidence)**

15 HEARING OFFICER MILLER: I have to ask this question, but
16 I'm going to qualify it. Are there any petitions pending in
17 other Regional offices involving other facilities of the
18 Employer? I recognize that there are quite a few. Are there
19 any that would have an impact on this proceeding directly to
20 the parties' knowledge?

21 MR. MODEL: No.

22 MR. SPEAR: Well, by -- by directly, there -- let me say
23 this, I'm aware of no other petitions in Region 3, so if that's
24 what you mean by direct, then the answer is no. There is a
25 interrelationship between all of the petitions, I think, for

1 reasons that the parties have been fighting over, but -- and --
2 and it -- as of Friday, I think, there were 91 total open
3 petitions by checking the Board's website. And I -- I haven't
4 checked this morning yet to see if there were any others, but
5 to directly answer your question about a direct connection, I
6 guess the answer is no.

7 MR. MODEL: I think there are. So there are three
8 petitions that are -- that are currently subject to request for
9 review. That's down in Washington. So those are, of course,
10 related directly.

11 HEARING OFFICER MILLER: All right. So Mr. Model, are you
12 referring to the three in the Buffalo area that are subject to
13 the request for review?

14 MR. MODEL: Right. Correct.

15 HEARING OFFICER MILLER: Thank you. All right. So any --
16 anything else the parties would like to say on that topic
17 before we move on?

18 MR. SPEAR: No.

19 MR. MODEL: No.

20 HEARING OFFICER MILLER: Okay. All right. Parties are
21 reminded that prior to the close of the hearing, the hearing
22 officer will solicit the parties' position on the type, date,
23 times, and locations of an election and the eligibility period.
24 I will not permit litigation of those issues. The hearing
25 officer will also inquire as to the need for foreign lane --

1 foreign language ballots and notices of election. Please have
2 the relevant information with respect to these issues available
3 at that time.

4 The parties have also been advised that the hearing will
5 continue from day to day as necessary until completed unless
6 the Regional Director concludes that extraordinary
7 circumstances warrant otherwise.

8 As to the issues to be litigated at this hearing, the
9 Regional Director has directed that there are no issues to be
10 litigated in this proceeding. Specifically, the Regional
11 Director has instructed me to inform the parties, consistent
12 with the order issued by her on February 18th, 2022, that the
13 Employer is precluded from raising any arguments or litigating
14 any matters included in its untimely served statement of
15 position.

16 A discussion of the rationale for the Regional Director's
17 determination in that regard can be found in the February 18th
18 order. I'm not going to regurgitate it here. I don't want to
19 muddy the waters. Her -- her rationale is set forth in that
20 order, which is also included in the record as Board Exhibit
21 1(d), part of the formal papers.

22 So along those lines and consistent with her -- her -- you
23 know, with any issue that I'm aware of, there are no other
24 issues that would require litigation. But I will let the
25 parties speak on that. I'll have the Employer go first if

1 they'd like to add anything.

2 MR. MODEL: I'd like you to further detail. Are you --
3 are you saying that there will be no witnesses in total, there
4 will be no cross-examination, there will be -- and then we're
5 going to summarize in briefs? I'd like you to be clear, Tom.
6 I know you sent an email out after the order came from the
7 Regional Director, so I'd like you to be clear on what --
8 what's actually happening today.

9 HEARING OFFICER MILLER: Sure. Absolutely. I'm happy to
10 do that. So because there are no issues to be litigated,
11 there -- there are no witnesses that -- that the Employer can
12 present because their case has been precluded by the Regional
13 Director's order. And because there are no issues to be
14 litigated, I don't expect for the Petitioner to call any
15 witnesses. And -- and if they would like to do so, I'll
16 entertain an offer of proof to that effect. But given that the
17 Petitioner is seeking a presumptively appropriate single
18 facility and -- and inside that facility is seeking a
19 presumptively appropriate wall-to-wall unit, the -- the
20 Regional Director has instructed me that there -- there's
21 nothing to litigate. There are no witnesses that need to
22 testify at this proceeding.

23 Does that answer your -- does that clarify, Mr. Model,
24 or --

25 MR. MODEL: Yeah. Our -- our intention today is to make



1 offer of proofs and put documents into the record. Whether you
2 put them in the rejected file or not, that's going to be your
3 decision as the hearing officer, but that's our intention and
4 then to summarize it in a post-hearing brief.

5 HEARING OFFICER MILLER: Okay. Well, I'm happy to -- to
6 hear the offer of proof. I'm not trying to limit your ability
7 to make an offer of proof. And -- and I'm happy to do that
8 when we move forward here.

9 Mr. Spear, did -- do you require any more clarification
10 about what the Regional Director has instructed me to do in
11 terms of how to litigate this proceeding?

12 MR. SPEAR: No. I don't need clarification from you, but
13 I assume I -- I assume I have the right to -- to raise -- to
14 summarize my position at an appropriate time, if I choose to do
15 that, and obviously, if Mr. Model intends to introduce
16 exhibits, even though they will be rejected, I certainly have
17 the ability and the right to comment on those.

18 HEARING OFFICER MILLER: Oh, absolutely. No. that's --
19 that's proper procedure. Absolutely. So --

20 MR. HAYES: Mr. Hearing Officer, I have a -- I guess I
21 have a clarification of my own. What is the parties' position
22 on the appropriateness of post-hearing briefs given the order?

23 HEARING OFFICER MILLER: Well, the rules and regulations
24 require parties to be allowed to file post-hearing briefs, so
25 that -- that doesn't change regardless of the status of

1 litigating an issue or not. There -- there is still the
2 opportunity to file a brief. It's set forth in the rules and
3 regulations. There's no -- absent a waiver by the parties in
4 that regard -- by both parties in that regard, which I was
5 going to inquire about at the end of the record, there's no
6 ability for -- for the reason unilaterally stop parties from
7 filing briefs.

8 MR. HAYES: Thanks.

9 HEARING OFFICER MILLER: Okay.

10 MR. SPEAR: And remind me of the regulatory time limit.
11 Is it one week?

12 HEARING OFFICER MILLER: It is five business days from the
13 close of the hearing.

14 MR. SPEAR: Okay.

15 HEARING OFFICER MILLER: So let me get through -- there's
16 one or two more smaller issues, and then -- then I think it's
17 proper to address Mr. Model's offer of proof -- or Starbucks'
18 offer of proof.

19 Are there any other pre-hearing motions, such as motions
20 to quash subpoenas, things like that, that have been unresolved
21 so far that -- that I need to rule on at this time?

22 MR. SPEAR: Not that I'm aware of.

23 MR. MODEL: Not -- not that I'm aware of.

24 HEARING OFFICER MILLER: Okay. All right.

25 So Mr. Model, you -- you stated you wanted to make an



1 offer of proof. Are you prepared to make that at this time?

2 MR. MODEL: Yes. we -- we have offers of proof that we
3 are going to submit in writing. I can certainly read them to
4 the group, but we can also submit it in writing. And offers of
5 proof in writing are sufficient under the rules.

6 HEARING OFFICER MILLER: Are they prepared right now? Are
7 they --

8 MR. MODEL: Yes.

9 HEARING OFFICER MILLER: Okay. Can you distribute them
10 to -- to myself and to the Petitioner's counsel?

11 MR. MODEL: Yes.

12 HEARING OFFICER MILLER: So why don't we all -- why don't
13 we go off the record, while -- while they're being sent over,
14 so -- so we don't have to sit here in silence.

15 MR. MODEL: Okay.

16 (Off the record at 10:14 a.m.)

17 HEARING OFFICER MILLER: So we are back on the record. So
18 during off-the-record discussions, the Employer has sent us
19 some exhibits, the first one an offer of proof, and the plan is
20 to introduce.

21 So Mr. Model, if you can describe Employer Exhibit 1, the
22 offer of proof and then kind of go from there.

23 **(Employer Exhibit Number 1 Marked for Identification)**

24 MR. MODEL: Sure. Employer Exhibit 1 is a written offer
25 of proof regarding testimony that would -- that would have been

1 made by District Manager Michaela Murphy if called upon to
2 testify, and it goes through in detail what Ms. Murphy would
3 testify to.

4 In addition, it also contains an offer of proof with
5 regard to testimony and evidence that would have been presented
6 by Dr. Matthew Thompson, who is an expert -- who has been used
7 in -- actually, in Buffalo 2 as well as in other cases that
8 have been litigated in the country, and it goes into detail as
9 to what Dr. Thompson will testify to had he been -- had he been
10 permitted.

11 HEARING OFFICER MILLER: Okay. Does Petitioner wish to
12 say anything on the record before I rule on the -- on the offer
13 of proof presented by the employer?

14 MR. SPEAR: Yes. Yes. I -- I do. In -- in all of the 91
15 cases that have been or will be tried so far, the Union has
16 sought to have the Employer to furnish offers of proof because
17 in Buffalo, as you well know, Buffalo was the first set of
18 cases, and there were six days of hearing and a massive record
19 produced. There were then two days of hearings with the
20 subsequent Buffalo petition.

21 Now, there is another day appearing today where the
22 Employer is limited in what it can say, but I understand why it
23 is introducing the exhibits it's introducing.

24 But in all of these cases, the reason that the Union has
25 consistently requested that an offer of proof be furnished is

1 because the record produced in at least the first case and
2 really the first two cases that Region 3 has issued decisions
3 on now, have made very, very clear that the record and the
4 evidence is already sufficient for us to make a decision with
5 regard to the appropriateness of single site units throughout
6 the Starbucks corporate coverage in the United States.

7 Every place -- the evidence has been clear -- operates
8 essentially the same way, and we have consistently told
9 Starbucks, you know, I'm not foreclosing you from -- from
10 showing that there may be someplace somewhere that operates
11 differently, but it's very clear up to this point that there
12 has been no evidence that any of the places that have been
13 litigated so -- so far operate in a manner which is
14 meaningfully different than what Region 3 has already
15 determined is the case in the stores that have been litigated
16 in the Buffalo area.

17 There is no change, so of course, Starbucks does have the
18 ability to say, hey, you know what, this particular place is
19 really different, and we want to show you why. And if it's
20 really different, then I want to hear it, too, because we want
21 to be able to either rebut or see if maybe they're right, that
22 maybe, unlike all of the other 91 cases where we think the
23 record already is clear, that maybe here is an outlier, here's
24 the difference that is meaningful and will cause Regional
25 Directors and the Board in Washington to change their mind.

1 Now, for -- 40, 50 -- 60 years now, the Board has
2 consistently ruled in these kinds of cases. You have many
3 national chains that all -- all of them operate similar to the
4 way Starbucks operates in the sense that there is a -- there is
5 a -- a model that they utilize. It's the product that they
6 sell. They sell this product.

7 If people go into a Starbucks store, they want to buy
8 Starbucks coffee and food, and -- and they like the atmosphere,
9 and that's why they go to Starbucks. If they didn't like,
10 they'd go to a different coffee shop, or they wouldn't go to
11 coffee shops at all.

12 But Starbucks sells its product. So of course -- and --
13 and you can -- you -- you can look at any other places that are
14 national chains. They all put a premium on operating the same
15 way.

16 Since 1962, the National Labor Relations Board has said,
17 fine, we understand that, that's the way the retail industry
18 works, but that doesn't limit the employees' rights to say I
19 want to have an election in my store where I'm working with my
20 coworkers here, these are the people I know, and I think this
21 is an appropriate unit. And since 1962, the Board has agreed
22 with that and has shown no inclination to -- to change its
23 course on how it evaluates these cases.

24 Okay. So I could have said all that last -- last year
25 when we had the first case before Region 3 ruled on the cases,

1 but Region 3 ruled on the first set of petitions. Then it
2 ruled on the second set of petitions.

3 What is -- and by the way, of course, the rulings are
4 imminently correct because they fulfill the promise the Act
5 makes to employees that I have -- I, as an employee, have
6 Section 7 rights. And if you read section -- Section 7
7 carefully, it's -- it's the fulcrum of the Act.

8 It doesn't contain the word employer in it. It talks all
9 about employees and what employees' rights are, and the Act was
10 designed, when it was passed in 1935, to safeguard the rights
11 and to advance the rights of employees in -- in engaging in
12 collective activity -- concerted activity.

13 So section 7 hasn't changed. Of course, there have been
14 statutory amendments since then, a few, and I understand that
15 employers have certain protections, but they don't have the
16 protections that are embodied in Section 7. Those are the
17 protections that are exclusively the employees' to exercise.

18 So the Board has said many, many times that one of those
19 rights an employee has is to -- is to form a union with his or
20 her fellow employees in their retail establishment -- in their
21 single store. And the Board agrees with that.

22 Now, of course -- and I'm not going to get -- I really
23 don't -- I didn't intend to get into -- into the weeds on this,
24 but -- but I just wanted to make the point that now in -- in --
25 in putting forth a -- an offer of proof, which is what we do

1 want Starbucks to do in each and every case in the event that
2 it does provide something that is different in a meaningful way
3 from what has gone before.

4 What's remarkable about this offer of proof is it doesn't
5 show any difference at all. In eight days, I think Region 3
6 has a clear understanding of how Buffalo Starbucks stores work.
7 And this particular offer of proof doesn't say anything that
8 the Regional Director hasn't exhaustively already considered
9 and determined in this case, not to mention the region -- not
10 to mention the -- the Board in Washington.

11 Now, here's another remarkable thing about the offer of
12 proof. The offer of proof talks about what Dr. Thompson
13 would -- would talk about if called to testify, and he's, of
14 course, testified in a number of other proceedings that have
15 already occurred here and elsewhere.

16 And -- and remarkably, it doesn't say what the Board is
17 interested in. It talks all about percentages. It talks about
18 30s and 50s and 70s and 80, and they all sound like great
19 numbers. Oh, that must mean something if you have a 70 percent
20 number somewhere. 70 percent of what? Well, who cares? I
21 don't know, but 70 percent sounds good. But it doesn't have
22 the number that's the only crucial number that each and every
23 decision so far has -- has talked about.

24 So if we look at -- and I -- again, forgive me. I don't
25 want to go on too long, but I think it needs to be put into the



1 record.

2 If we review every decision that has issued so far -- and
3 there have been five of them throughout the country -- they all
4 talk about this fact, and so has the Board in its decision
5 in -- in the first -- in Buffalo 1 -- in Region 3's first set
6 of cases.

7 It said that we dis -- it says that it agreed with the
8 Regional Director's conclusion that interchange support the
9 Petitioner for single facility units. In this regard, we
10 observe that, although the Employer has demonstrated that a
11 significant percentage of employees work at least one shift at
12 another store per year, this is not evidence of regular -- and
13 regular is emphasized -- interchange sufficient to rebut the
14 single facility presumption, especially because the data
15 provided indicate that the petitioned-for stores borrow only a
16 very small percentage of their labor from other stores, citing
17 Carvel, Inc (phonetic).

18 So each and every decision, if we go through the decisions
19 and direction of the election, talk about, well, what is the
20 actual percentage of shifts and hours that, what they call,
21 borrowed employees have worked in each of these stores? And
22 it's -- it's -- it's long -- it -- it -- it seems to be one
23 percent or two percent or three percent or seven percent, and
24 each and every decision goes through that number.

25 And so in -- in the decision in Buffalo 1, which is 3-RC-

1 282115, et al, the Regional Director went through that process.
2 It considered the statistics that were -- that were presented,
3 and it said that it was -- it was -- in that case it was, I
4 think between three and seven percent at those stores. And --
5 and that was deemed not to show the regular interchange that
6 the Board has demanded in other cases (audio interference) unit
7 is in appropriate because that's what the Employer has to show,
8 that the single location is inappropriate. Not that it's less
9 appropriate, but it's inappropriate. And why? Because as we
10 know single site units in the retail industry are presumptively
11 appropriate.

12 So -- so they have -- they have, as the cases constantly
13 say, a heavy burden to shoulder. And -- and so again -- and --
14 and -- and just to go through briefly, Buffalo 2, the case
15 beginning 3-RC-285929, et al., on page 26 talks about 2.6
16 percent of shifts or 2.1 percent of hours were actually shown
17 to have been shared at one facility; 1.3 percent of shifts and
18 1.1 percent of hours at another store; 4.5 percent and 3
19 percent -- 3.7 percent at a third store. It showed those kinds
20 of numbers.

21 If you look at the two Region 28 decisions, one of which
22 just was issued on Friday, at 28-RC page 28 -- I'm sorry --
23 28-RC number 286556, on page 16 it goes through the same sort
24 of percentages, 1.4 percent of total shifts worked were done by
25 borrowed employees at one store; 1.9 percent of total shifts

1 worked at either another store or another year; and 1.8 percent
2 of the total hours worked, and that's on pages 16 and 17 of
3 that decision.

4 On Friday's case, which is 28-RC-289033, if you look at
5 pages 6 and 7, they go through the same numbers, specifically
6 page 7. Dr. Thompson in that case, borrowed shifts -- said
7 that borrowed shifts amounted to 1.1 percent of shifts in one
8 of the stores -- in that store, not one of the stores.

9 And then finally, the -- in Seattle, they issued a
10 decision, 19-RC-287954, on Friday as well. On page 14 it talks
11 about the same kinds of numbers.

12 So -- so you don't see those numbers, whether they're one,
13 three, seven percent or what in this stipulation, and -- and --
14 and Starbucks puts forth that Dr. Thompson is ready to testify.
15 He's ready to testify about what? About everything except what
16 matters.

17 He doesn't -- there's not -- there's nothing in the -- in
18 the offer of proof to show that what's the percentage of
19 stores -- of -- of hours worked or shifts worked by borrowed
20 employees. And Starbucks knows that that's important not only
21 because the Board said so, not only because five regions have
22 said so, but because Region 3 already went through eight days
23 of hearings where they talked about those numbers.

24 Where -- this -- this first decision -- this first case, I
25 think, is a Buffalo store. We already know everything that

1 anybody would ever want to know about Buffalo Starbucks stores.
2 There couldn't be anything else that we don't know yet or that
3 we've already heard.

4 So -- so this is a -- a longwinded way of my saying that,
5 you know, it -- I know you're going to put the -- the offer of
6 proof into the -- the rejected exhibit file, I guess, and --
7 and I invite Starbucks in every case to provide us, before the
8 morning of the hearing, with offers of proof in the forlorn
9 hope that maybe there will be one where they might be able to
10 begin to prevail on their heavy burden of showing that these
11 single stores that have been petitioned for are not appropriate
12 units.

13 I don't think they can do it, but I can't -- you never say
14 never. But -- but there -- there is a better way for the Board
15 to manage these cases, and I'm not blaming the Board as of yet
16 because the Board is -- is confronted with all these petitions,
17 and they have to deal with each one.

18 But I think the parties should be able to get together to
19 try to find a better way than to waste everyone's time, money,
20 and certainly what's most important, the anxiety levels and the
21 frustration of the individual workers who want to have
22 elections as quickly as they can after they file a petition.
23 They want to make sure that the National Labor Relations Act
24 has some meaning and is just not, you know, time for -- for fun
25 and games, which is what we're going through.

1 I mean, fine, it makes lawyers money, I guess, and it
2 gives the Board opportunity to issue all sorts of decisions.
3 But in my opinion -- in my humble opinion, I think that we
4 should be going to elections right away by agreement. And if
5 Starbucks wants to maintain its position that some large
6 unit -- larger unit -- and I can't tell which larger unit from
7 case to case they feel is appropriate.

8 Fine. They can -- they can argue that. But we already
9 have so many facts that -- that show everything you need to
10 know about whether some larger unit is appropriate and has
11 obliterated, in the Board's words, the homogeneity of these
12 single site units that have bene petitioned for in all of --
13 all of the 91 cases so far, and I'm sure there are more to
14 come.

15 If we have an offer of proof that does that, I think we
16 can save everybody lots of time, expense, effort, anxiety, and
17 everything else, and we can have the Act administered in an
18 orderly way that makes sense rather than in this way.

19 Mr. Model and I have gotten along well. Lawyers
20 fortunately operate -- in Pennsylvania, we have something
21 called a code of civility where lawyers have to treat each
22 other with civility, and I've been -- Littler Mendelson has
23 done that with our firm, and I sure it has in all other firms,
24 too.

25 I'm sorry to say that a code of civility doesn't apply, it

1 seems -- or -- or doesn't seem to apply in the relationship
2 between our clients because they shouldn't be putting the Union
3 through this, and really, they should not be putting the
4 employees through all of this, and that's what really makes me
5 sad. And I wish there were a way for the parties to come to
6 some more orderly arrangement that makes sense so that we can
7 stop all this nonsense. That's what this is.

8 So -- so Alan, you know, if you have information on any of
9 the stores that are petitioned for that show they are any
10 different from what your offer of proof today says, that's --
11 that's great. But -- but in saying that Dr. Thompson is going
12 to say all of this and give all these numbers of 30s and 40s
13 and 50 percent of different numbers, but doesn't talk about the
14 main things, which is, is it really one or two or three or four
15 percent, and if it really is, of shifts worked and hours
16 worked, that's really all that matters here.

17 Well, I think that would raise, if you were to consider
18 it, Mr. Miller or if the Regional Director were to consider it,
19 that gives rise to an unfavorable inference. And the
20 unfavorable inference is they know what the numbers are.
21 They're not getting it to us for a reason because if the
22 numbers helped them, they would. And they're not.

23 And that favorable reason obviously is it's more of the
24 ones and twos and threes and four percents that we're going to
25 see, which are going to lead to the same decisions, which

1 are -- and we can -- we can go through this for months and
2 years, I guess. And I guess that's what Starbucks wants.

3 And Starbucks is not acting as a friend of the employee.
4 The employees have -- have filed these petitions, and I -- and
5 don't laugh at me, but because they really value their work,
6 and they really liked working for Starbucks. They may love
7 Starbucks for all I know, but they want Starbucks to treat them
8 decently. They want to active partner. They're called
9 partners, which is very nice. They should be treated as
10 partners. This endless litigation for no reason is not
11 treating people like partners.

12 So I guess ultimately what I'm saying is all of this is
13 ultimately irrelevant because -- maybe not irrelevant. I guess
14 what I'm saying is the offer of proof does not begin to carry
15 the Employer's burden of showing that the single-site unit
16 petitioned for, in this particular Buffalo case, especially
17 where we already have two other Buffalo decisions issued by
18 Region 3, this is no different. So it's insufficient as a
19 matter of an offer of proof. It can -- it will be put into the
20 rejected exhibits file, I suppose, but that's what I had to
21 say.

22 HEARING OFFICER MILLER: So Mr. Model, did you want to
23 respond to -- to the --

24 MR. MODEL: Mr. Spear is certainly opinionated, and he's
25 entitled to his opinion. I disagree in many regards. But the

1 question that you posed was really a question about the offer
2 of proof, and he really didn't answer any of that. Instead, we
3 got a history lesson for about 20 minutes for a post-hearing
4 brief I gave orally.

5 So the reality here is that we've been unfairly denied a
6 right to put on evidence, and we're going to raise all those
7 issues in our post-hearing brief. We have a right under the
8 rules, under 102.68, to make an offer of proof in writing.
9 That's what we've done today.

10 I wholeheartedly disagree that there's nothing new here.
11 There is new evidence. I think Mr. Spear will -- will see the
12 record more fully as he gets more involved in these cases.

13 And the citation to case law that's 60 years old -- and
14 that's part of the problem, and that's what down on request to
15 review with the Board right now. The case law was created 60
16 years ago before there was technology, before computers were
17 used, before phones were used, before you had these national
18 chains that had, you know, thousands of stores. So that's what
19 the Board is going to address -- or should address.

20 We have an interest here in protecting the rights of
21 partners to vote, so you know, Mr. -- Mr. Spear's comments on
22 that, those are his opinions. It's not accurate, and it's not
23 according to how the company views its partners and views this
24 whole process.

25 We have a right to make an offer of proof. I ask that you

1 accept it. It is new evidence, and -- and the rules provide
2 for us having the ability to make an offer of proof.

3 HEARING OFFICER MILLER: Okay. Thank you, Mr. Model.

4 So I am going to reject the offer of proof on the grounds
5 that the Employer is precluded from -- precluded from raising
6 these arguments and litigating these things due through the
7 untimely sort of statement of position in this matter.

8 I'm not addressing Mr. Spear's comments about the content
9 of it. It's just, you know, given the Regional Director's
10 order on preclusion, I have to reject this exhibit, this offer
11 of proof, which is being introduced as Employer Exhibit 1. So
12 it will end up in the rejected exhibit file because I'm
13 rejecting it, but that's -- that's where it will end up.

14 **(Employer Exhibit Number 1 Rejected)**

15 MR. MODEL: So we're -- sorry, Tom. So -- so we're clear,
16 it's being rejected because -- an offer of proof is being
17 rejected due to the order of the Regional Director on February
18 18th stating that we don't have the right to introduce
19 evidence. That's why it's being rejected?

20 HEARING OFFICER MILLER: Correct. The -- the -- it -- it
21 seeks to litigate issues that the Employer is precluded from
22 based on that order. Does that make sense?

23 MR. MODEL: Thank you.

24 HEARING OFFICER MILLER: Okay. All right. So moving on,
25 does the Employer want to just describe the next exhibit it

1 would like to introduce?

2 MR. MODEL: Yes, sir. Number 2 -- Employer 2 is the
3 statement of position that was filed in this case and -- and
4 served on the Union and the Region.

5 **(Employer Exhibit Number 2 Marked for Identification)**

6 HEARING OFFICER MILLER: Okay. So I am going to reject
7 this exhibit as well because, you know, it was not timely
8 served on Petitioner consistent with the Regional Director's
9 order. So this -- Employer Exhibit 2 will also be in the
10 rejected exhibit file.

11 **(Employer Exhibit Number 2 Rejected)**

12 MR. MODEL: Okay.

13 HEARING OFFICER MILLER: Do you want to do 3 and 4
14 collectively? Because they're kind of --

15 MR. MODEL: Well, sure. Employer Exhibit 3 and Employer
16 Exhibit 4 are affidavits of two attorneys from the firm of
17 Littler Mendelson with regard to the filing and service issues
18 that we encountered. And they're affidavits from them as well
19 as attachments that are referenced in the affidavits.

20 **(Employer Exhibit Numbers 3 and 4 Marked for Identification)**

21 HEARING OFFICER MILLER: Okay. And because we're not
22 litigating the -- the service of the statement of position in
23 this proceeding because that was already addressed in the
24 February 18th order, I'm rejecting those exhibits as well, and
25 they're going to end up in the rejected exhibit file, okay.

1 **(Employer Exhibit Numbers 3 and 4 Rejected)**

2 MR. MODEL: Employer Exhibit 5 is a letter that I wrote to
3 you, Mr. Miller, dated February 15th of this month, and it
4 relates to the same exact issue with regard to the filing and
5 service of the statements of position.

6 **(Employer Exhibit Number 5 Marked for Identification)**

7 HEARING OFFICER MILLER: Consistent with my other ruling,
8 I'm going to reject that because that's not an issue we're
9 litigating in this proceeding.

10 MR. MODEL: Mr. -- Mr. Miller, I ask you to reconsider
11 that these -- you put into evidence as Board Exhibit 1 full of
12 documents that relate to procedural history, so there really
13 wouldn't be a basis to exclude this one as well as the next two
14 documents, which is the motion that was filed by the Union, as
15 well as the Employer's opposition.

16 I don't know why you didn't include them, as they're part
17 of the -- it's part of the record -- they should be part of the
18 record.

19 HEARING OFFICER MILLER: Okay. Well, I can explain.
20 The -- the formal papers are documents issued by the Region, so
21 they're not documents issued by the Region. That's why they
22 were not included in the formal papers.

23 The reason they're being rejected in this proceeding is
24 because we're not litigating the timeliness of the Employer's
25 filing in service of the statement of position in this hearing.

1 That's already been addressed in the previous order. But they
2 are a part of the record when I reject them in the rejected
3 exhibit file. So any request for review you want to file on
4 that basis, the Board will see those documents as part of the
5 rejected exhibit file.

6 MR. MODEL: Thank you.

7 HEARING OFFICER MILLER: So I think we said that was
8 Employer 5 you were offering as being rejected for that reason.
9 **(Employer Exhibit Number 5 Rejected)**

10 MR. MODEL: Okay. Employer 6, sir, is an email that you
11 sent to the parties on February 19th elaborating upon the
12 Regional Director's order as to how this proceeding and the
13 proceeding for the -- what I'll call the Ithaca matter and
14 Rochester matter would proceed, so it's your email.

15 **(Employer Exhibit Number 6 Marked for Identification)**

16 HEARING OFFICER MILLER: Okay. So I'm rejecting that for
17 the same reason I rejected the -- the previous exhibits.

18 **(Employer Exhibit Number 6 Rejected)**

19 MR. MODEL: And Employer Exhibit 7 is the Employer's
20 response to Workers United's motion to preclude, and to round
21 out the record, Employer Exhibit 8 is actually Workers United's
22 motion because that was ultimately what was ruled upon, so we
23 believe it should be in the record.

24 **(Employer Exhibit Numbers 7 and 8 Marked for Identification)**

25 HEARING OFFICER MILLER: Okay. I understand. I'm -- I'm



1 rejecting those exhibits as well, for the same reasons I've
2 already stated. But again, each of these exhibits will be in
3 the rejected exhibit file and be part of the record in that
4 fashion.

5 **(Employer Exhibit Numbers 7 and 8 Rejected)**

6 MR. MODEL: Okay. Those are all the exhibits.

7 HEARING OFFICER MILLER: Okay. So the Employer has no
8 plans to --

9 MR. SPEAR: I -- I have a question.

10 HEARING OFFICER MILLER: Yes, sir.

11 MR. SPEAR: I think I know the answer, but I want to make
12 sure. When an exhibit is put into the "rejected exhibits
13 file," and there are subsequent proceedings before the Board or
14 Courts of Appeals, the record includes the rejected exhibits
15 file; doesn't it?

16 HEARING OFFICER MILLER: I can't speak to what happens at
17 the Court of Appeals, sir. I'm -- I'm not an expert in that
18 area. All I can tell you is it becomes part of the overall
19 record. But in terms of what the Regional Director will rely
20 on in issuing her decision, it will not be anything in the
21 rejected exhibits file.

22 MR. SPEAR: No. Yeah. The -- my question to you then --
23 you're right -- would be just with regard to the National Labor
24 Relations Board's record of this proceeding. It includes -- it
25 includes as part of the record something called a rejected

1 exhibits file that contains the documents that we've just been
2 talking about, correct?

3 HEARING OFFICER MILLER: That's correct.

4 MR. SPEAR: Okay. I just wanted to make sure about that.
5 Okay.

6 HEARING OFFICER MILLER: Okay. All right. Does the
7 Employer have any more -- other arguments that they wanted to
8 raise or -- or have addressed at this time?

9 MR. MODEL: No. We're going to raise them all in the
10 post-hearing brief.

11 HEARING OFFICER MILLER: Okay. Understood. Does the
12 Petitioner have any arguments or -- or offers of proof that it
13 wants to make at this time?

14 MR. SPEAR: No. Other than what I said. No.

15 HEARING OFFICER MILLER: Okay.

16 MR. SPEAR: I -- I -- I would request -- I know that
17 parties have the right to file briefs. I would request that
18 the Employer consider not filing a brief so that we can get
19 this proceeding decided more quickly, but I also am aware of
20 what the regulation says.

21 HEARING OFFICER MILLER: Okay. All right. We'll -- we'll
22 get -- we'll get to that when we get closer to the end of the
23 record.

24 MR. SPEAR: Okay.

25 HEARING OFFICER MILLER: So -- so now kind of some other

1 stuff before we get to the -- to the end of the record.

2 Does the Petitioner wish to proceed to an election in any
3 alternate unit if the unit sought is found to be inappropriate
4 by the Regional Director or the Board?

5 MR. SPEAR: Yes.

6 HEARING OFFICER MILLER: Okay. All right. So any
7 outstanding stipulations? I -- I received -- we're going to
8 talk about election details now.

9 Board Exhibit 2 contains a stipulation from the parties
10 that they believe an election held by mail is appropriate. So
11 I'll ask the parties just, you know, in terms of the timing of
12 the election of -- of any mail-ballot election, what are the
13 parties' positions on that?

14 MR. SPEAR: My position would be, assuming the Region
15 issues a decision in direction of election, that the ballots be
16 mailed out as quickly as humanly possible.

17 HEARING OFFICER MILLER: Okay. Mr. Model, any -- any
18 specifics you want to add about the Employer's position
19 about -- on a mail-ballot election in terms of when it would
20 take place, or the method by which it was -- is -- is done?

21 MR. MODEL: I -- I believe the Region as directed -- the
22 Region has directed elections in prior cases that had a cadence
23 that -- that appeared to work for the parties, and so I would
24 adhere to that same cadence.

25 HEARING OFFICER MILLER: Okay. Understood. Thank you.

1 MR. SPEAR: Yeah. We're -- we're fine with the way prior
2 elections were scheduled.

3 HEARING OFFICER MILLER: Okay. Understood. Thank you.

4 Is the Petitioner willing to waive any portion of the ten-
5 day voter list requirement?

6 MR. SPEAR: Can -- can you please, just for purposes of
7 the audience, explain what that means?

8 HEARING OFFICER MILLER: Sure. So under the Board's rules
9 and regulations if a direction of election is sent out, the
10 Employer has two business days to provide a list of voters in
11 the unit directed for election, and then under the Board's
12 rules and regulations, the other parties, the nonemployer
13 parties are entitled to have that list for up to ten calendar
14 days before an election is held, which in this case, would be
15 the day the mail ballots were sent out.

16 MR. SPEAR: Right. So -- so we -- the Union would waive
17 that.

18 HEARING OFFICER MILLER: The entirety of the ten days?

19 MR. SPEAR: Yeah.

20 HEARING OFFICER MILLER: Okay. All right.

21 Is either party aware of the need for either the ballot or
22 the notice of election to be translated into any language other
23 than English?

24 MR. MODEL: No.

25 MR. SPEAR: I'm not aware of it. If -- if someone tells

1 me, you know, I'll let you know.

2 HEARING OFFICER MILLER: Okay. Yeah. Please let the
3 Regional Director know if that does --

4 MR. SPEAR: Okay.

5 HEARING OFFICER MILLER: -- become an issue. Thank you.

6 MR. SPEAR: All right.

7 HEARING OFFICER MILLER: In terms of the -- the
8 eligibility period, do the parties have positions on what an
9 appropriate eligibility period is?

10 MR. MODEL: So again, I just follow -- I would look at the
11 prior decisions.

12 MR. SPEAR: So would I.

13 HEARING OFFICER MILLER: Okay. All right. Are there any
14 other facts that the Regional Director should be aware of
15 before scheduling an election for the earlier practical date in
16 this case should one be directed?

17 MR. MODEL: No.

18 MR. SPEAR: I'm not sure what facts you're looking for, so
19 no.

20 HEARING OFFICER MILLER: Okay. Just kind of an omnibus
21 question, anything you can think of related to the timing of
22 the elections.

23 MR. SPEAR: No. I'm not -- I'm no -- not aware of
24 anything.

25 HEARING OFFICER MILLER: Okay.

1 Mr. Model, anything else on that?

2 MR. MODEL: No.

3 HEARING OFFICER MILLER: Okay. All right. So Mr. Model,
4 can you give us the name and contact information for the onsite
5 representative whom the Regional Director should send the
6 notice of election if an election is directed?

7 MR. MODEL: Sure. Mallori, M-A-L-L-O-R-I, Coulombe,
8 C-O-U-L-O-M-B-E, Regional Director. And it can go to the store
9 address at Starbucks, 235 Delaware Avenue, Buffalo, 14 --excuse
10 me, 14202.

11 HEARING OFFICER MILLER: Okay. Do you have an email
12 address for this individual as well?

13 MR. MODEL: Sure. Mcoulombe@starbucks.com.

14 HEARING OFFICER MILLER: Thank you. So the Regional
15 Director will issue a decision in this matter as soon as
16 practical and will immediately transmit the document to the
17 parties and their designated representatives by email,
18 facsimile, or by overnight mail if neither an email address nor
19 a facsimile number is provided.

20 If an election is directed, the Employer must provide the
21 voter list to be time -- timely filed and served. The voter
22 list must be received by the Regional Director and the parties
23 named in the direction of election within two business days
24 after the issuance of a direction of election, unless a longer
25 period, based on extraordinary circumstances is specified in

1 the decision and direction of election.

2 A certificate of service on all parties must be filed with
3 the Regional Director when the voter list is filed. The Region
4 does not serve the voter list. And -- and further instructions
5 on that will be -- you know, will be in the decision of
6 direction of election or letter accompanying it.

7 Going to the parties' discussion about briefs, as I
8 mentioned earlier, the parties have a right to file briefs
9 under rules and regulations, but if both parties agree to waive
10 that right, we can do oral arguments in lieu of briefs. What
11 are the parties' positions on that?

12 MR. MODEL: We -- we are going to write a brief.

13 HEARING OFFICER MILLER: Okay. All right. And Mr. Spear,
14 I know you already stated your position that you believe briefs
15 aren't necessary, but given the Employer's position, are -- are
16 you also going to plan to file a brief?

17 MR. SPEAR: I'll -- I'll think about it.

18 HEARING OFFICER MILLER: Okay. Thank you. All right.

19 So the briefs will be due five business days from now, so
20 March 1st of 2022. They'll be due at 11:59. I know there's
21 been a little confusion about the due time for that, but it
22 will be due at 11:59 p.m. on March 1st.

23 MR. SPEAR: I'm sorry, Tom. What -- what was the date?

24 HEARING OFFICER MILLER: March 1st, 2022.

25 MR. SPEAR: All right.

1 HEARING OFFICER MILLER: Briefs may be filed by e-filing
2 on the Board's website, by mail, or by hand delivery, but may
3 not be filed by fax. Again, e-filing is the preferred method
4 for filing these things.

5 The parties are reminded that they should request an
6 expedited copy of the transcript from the court reporter. Late
7 receipt of the transcript will not be grounds for an extension
8 of time to file briefs if the Regional Director has, you
9 know -- if the Regional Director receives such a request.

10 Is there anything further before this record is closed?

11 MR. MODEL: No.

12 HEARING OFFICER MILLER: Okay. Hearing nothing further,
13 the record is now closed.

14 **(Whereupon, the hearing in the above-entitled matter was closed**
15 **at 11:24 a.m.)**

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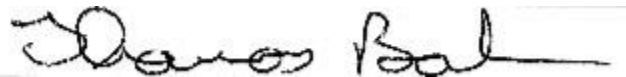
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C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom videoconference, before the National Labor Relations Board (NLRB), Region 3, Case Number 03-RC-289785, Starbucks Corporation and Workers United, held at the National Labor Relations Board, Region 3, 130 S. Elmwood Ave., Suite 630, Buffalo, New York 14202, on February 22, 2022, at 9:56 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



THOMAS BAKER

Official Reporter

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

Starbucks Corporation,	Case Nos.	03-RC-289793
		03-RC-289796
Employer,		03-RC-289805

and

Workers United,

Petitioner.

Place: Buffalo, NY (Via Zoom Videconference)

Dates: February 22, 2022

Pages: 1 through 20

Volume: 1

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

In the Matter of:

STARBUCKS CORPORATION,

Employer,

and

WORKERS UNITED,

Petitioner.

Case Nos. 03-RC-289793
03-RC-289796
03-RC-289805

The above-entitled matter came on for hearing, via Zoom videoconference pursuant to notice, before **THOMAS MILLER**, Hearing Officer, at the National Labor Relations Board, Region 3, 130 S. Elmwood Ave., Suite 630, Buffalo, New York 14202, on **Tuesday, February 22, 2022, 12:06 p.m.**



1 A P P E A R A N C E S

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E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**Board:**

B-1 (a) through B-1 (q)

5

5

B-2

6

6

Employer:

E-1

12

Rejected

E-2 (a) through E-2 (c)

13

Rejected

E-3 through E-8

14

Rejected

P R O C E E D I N G S

HEARING OFFICER MILLER: So we are on the record, and the hearing will be in order. This is a formal hearing in the matter of Starbucks Corporation, case number 03-RC-289793, 03-RC-289796, and 03-RC-289805 before the Nation Labor Relations Board. The hearing officer appearing for the National Labor Relations Board is Thomas Miller.

All parties have been informed of the procedures at formal hearings before the Board by service of a description of procedures in certification and decertification cases with the notice of hearing. I have additional copies of this document for distribution if any party wants one.

Will Counsel, please, state their appearances for the record? And we'll start with the Petitioner.

MR. SPEAR: Yes, thank you. My name is Samuel L. Spear, Spear Wilderman, P.C., 230 South Broad Street, Philadelphia, PA 19102. That's suite 1400. And with me is Sarah Tarlow and Vlad Kachka, two attorneys in my law firm.

MR. HAYES: And I'm Ian Hayes, Hayes Dolce, Buffalo, New York for the Petitioner.

HEARING OFFICER MILLER: Okay. And for the Employer?

MR. MODEL: Alan Model of the firm Littler Mendelson. And also joining me are Marie Duarte and Sam Wiles.

HEARING OFFICER MILLER: Thank you. Are there any other appearances? Let the record show no further response.



1 Are there any other persons, parties, or labor
2 organizations in the hearing room who claim an interest in this
3 proceeding? Let the record show no response.

4 I now propose to receive the formal papers. They have
5 been marked for identification as Board's Exhibit 1(a) through
6 1(q), inclusive, Exhibit 1(q) being a description of the entire
7 exhibit. This exhibit has already been shown to all parties.
8 Are there any objections to receipt of this exhibit into the
9 record?

10 MR. SPEAR: No.

11 MR. MODEL: No.

12 HEARING OFFICER MILLER: Okay. Hearing no objection, the
13 formal papers are received into evidence.

14 **(Board Exhibit Numbers 1(a) through 1(q) Received into**
15 **Evidence)**

16 HEARING OFFICER MILLER: Are there any motions to
17 intervene in these proceedings to be submitted to the hearing
18 officer for ruling by the Regional Director at this time?

19 Are the parties aware of any other employers or labor
20 organizations that have an interest in this proceeding?

21 MR. MODEL: No.

22 HEARING OFFICER MILLER: Mr. Spear, can you answer the
23 question as well?

24 MR. SPEAR: No.

25 HEARING OFFICER MILLER: Thank you.

1 The parties to this proceeding have executed a document,
2 which is marked as Board Exhibit 2. It contains a series of
3 stipulations, including, among other items, that the Petitioner
4 is a labor organization within the meaning of the act. There
5 is no contract bar in these proceedings, and that the Employer
6 meets the jurisdictional standards of the Board.

7 MR. SPEAR: No objection.

8 HEARING OFFICER MILLER: Okay. I'm sorry, there was a
9 really loud firetruck going by. I don't want that to be
10 garbled.

11 So now, I'll ask the question. Are there any objections
12 to the receipt of Board Exhibit 2 into the record?

13 MR. MODEL: No, I have no objection.

14 MR. SPEAR: No.

15 HEARING OFFICER MILLER: Okay. Hearing no objection,
16 Board Exhibit 2 is received into evidence.

17 **(Board Exhibit Number 2 Received into Evidence)**

18 HEARING OFFICER MILLER: Are there any petitions pending
19 in other Regional offices involving other facilities of the
20 Employer? I'll just ask that question and let the parties
21 answer it.

22 MR. MODEL: Yes.

23 MR. SPEAR: Yes, there are.

24 HEARING OFFICER MILLER: Okay. Are there any that are
25 going to affect how we conduct this hearing?



1 MR. SPEAR: That's up to you.

2 MR. MODEL: There are -- there are three petitions that
3 are pending. Actually, no, there are no other ones in this --
4 in this market, so I assume not.

5 HEARING OFFICER MILLER: Thank you.

6 MR. SPEAR: Our position is there should be none, right?

7 HEARING OFFICER MILLER: That is -- that is, indeed, the
8 Petitioner's position as I understand it.

9 Okay. So the parties are reminded that prior to the close
10 of the hearing, the hearing officer will list the parties
11 positions, the types -- well, this is a little outdated,
12 because the parties have stipulated to a mail-ballot election.
13 But any details related to that, we will discuss before the end
14 of the hearing.

15 But we will not permit litigation of those issues related
16 to the method of the election, and then, the timing and
17 whatnot. The hearing officer will also inquire as to the need
18 for foreign language ballots and notices of election, so I ask
19 the parties to have the relevant information, with respect to
20 those issues available at this time.

21 The parties have also been advised that the hearing will
22 continue from day to day, as necessary, until completed, unless
23 the Regional Director concludes any extraordinary circumstances
24 warrant otherwise.

25 So in terms of issues to be litigated at this proceeding,



1 the Regional Director issued an order on February 18th stating
2 that the issues raised in the Employer's statement of position
3 for these matters are not going to be litigated at this
4 hearing, and that the Employer was precluded from making those
5 arguments based on untimely service of the statement of
6 position on the Petitioner in this matter. Again, I'm not
7 going to go into, specifically, the reasons for that. The
8 parties can reference the February 18th order, which included
9 the formal papers of Board Exhibit O -- 1(o), excuse me.

10 But again, as I informed the parties in off-the-record
11 discussions, that means that there are no issues the Regional
12 Director believed need to be litigated in this proceeding that
13 have not been precluded. Meaning that the Regional Director
14 does not intend to allow the Employer to call any witnesses or
15 litigate anything related to the statement of position.

16 Mr. Model, is that clear enough on the record?

17 MR. MODEL: It is, sir. But I think maybe what might make
18 it easier for you and the parties is just to discuss adopting
19 the record from the prior hearing that we had ten minutes ago.
20 Because you made it clear in that record, as to how it's going
21 to proceed.

22 Mr. Spear made his position known, I made my position
23 known, and that may just facilitate this process.

24 MR. SPEAR: I would agree to that.

25 HEARING OFFICER MILLER: Okay.

1 MR. SPEAR: We can stipulate to that record.

2 HEARING OFFICER MILLER: Okay, so the parties are -- just
3 to confirm, the record that we just closed in 03-RC-289785,
4 involving the Buffalo facility that was petitioned for. The
5 rationale I explained there, the procedure I explained there --
6 the parties are comfortable with adopting that as the hearing
7 officer's position in this matter, as well. Correct?

8 MR. MODEL: Yes.

9 HEARING OFFICER MILLER: Okay. And the parties' responses
10 to that are the same, correct?

11 MR. MODEL: Correct.

12 MR. SPEAR: The responses are the same, except there are a
13 couple of very -- I wouldn't say small points. But there are a
14 couple of points where, when we talk about the offer of proof
15 that I want to mention that differ, because these next two
16 petitions, now, involve not Buffalo, but Ithaca and Rochester.
17 So I just wanted to comment on that very briefly.

18 MR. MODEL: And I will do the same. But as far as the
19 procedures that you laid out in the prior hearing, that's
20 certainly acceptable for this one, because it's the same
21 procedure.

22 HEARING OFFICER MILLER: All right --

23 MR. SPEAR: I agree.

24 HEARING OFFICER MILLER: Okay, great. Thank you.

25 So where we are is I believe the Employer would like to

1 make their offer of proof regarding this manner.

2 MR. MODEL: Um-hum.

3 HEARING OFFICER MILLER: And they prepared -- so, as the
4 Employers prepared -- and Mr. Model can correct me on this --
5 Employer Exhibit 1, which is the written offer of proof
6 regarding the issue -- regarding the evidence that would
7 provide if it were permitted to litigate the appropriateness of
8 the unit. Is that correct?

9 Okay. And --

10 MR. MODEL: Right.

11 HEARING OFFICER MILLER: -- if you'd like to state more on
12 that, I don't want to foreclose you.

13 MR. MODEL: No, we have an offer of proof that we've
14 already provided to the parties. And we're going to seek to
15 move it into the record. The purpose of the offer of proof is,
16 had we been permitted the opportunity to present a case, to
17 present evidence, to litigate the appropriateness of the unit,
18 like we believe we should have been, this is what witnesses who
19 we would have called would have testified to.

20 And so you have that in the document. I don't need to go
21 through it, unless you want me to, but it's in writing, so it's
22 self-explanatory.

23 HEARING OFFICER MILLER: No, I don't think it's necessary
24 for you to go through the document itself. But thank you for
25 that.

1 Mr. Spear, did you want to respond to that before I rule
2 on that? On the Employer's offer of proof? We can't hear you,
3 sir. It appears you're muted.

4 MR. SPEAR: Sorry about that. Thank you.

5 No, I just wanted to reiterate what I had said before. I
6 won't do it in detail.

7 This particular document, if I can refer to it, I think,
8 makes clear the point I was making before. The -- the proposed
9 offer of proof, paragraph 1(d), says all stores in the
10 district. And here, we're talking about -- is this Ithaca?
11 This is Ithaca. All stores in the district follow the same
12 exacting Starbucks operational protocols and personal policies,
13 as set forth in detail in the Buffalo 1 and Buffalo 2 hearings.

14 That's, again, exactly our point that we already made,
15 which is that despite all of the -- all of the stores operating
16 in the same fashion, with regard to the same sort of labor
17 relations practices, policies, and procedures -- again, there
18 are a number of regions that have already decided that the
19 single store units proposed remain appropriate. And so, this
20 just undergirds what we had already been saying.

21 The only other comment I would make is as in the -- as in
22 the offer of proof provided, with regard to the first hearing
23 this morning, that the expert testimony -- the discussion of
24 the expert testimony that would be offered remarkably omits the
25 sorts of percentages of -- of shifts and hours worked by -- by

1 borrowed partners at these three stores. It omits any mention
2 of that, when that seemed to be a central issue in all of the
3 other cases that the Board has considered so far.

4 HEARING OFFICER MILLER: Thank you.

5 Mr. Model, any further comment before I rule on the offer
6 of proof?

7 MR. MODEL: Well, with regard to the experts' testimony, I
8 mean, it's our position, and it's down at the Board on a
9 request for review that the analysis that's gone into the
10 interchange data in prior cases is just deficient. And it's
11 based upon a reading of the law that's 60 years old. So that's
12 something that will be decided by the Board.

13 But with regard to the offer of proof, we seek to have it
14 entered into evidence. We believe we're entitled to it being
15 put into evidence under 102.68, regardless of the Regional
16 Director's order that came out last week.

17 HEARING OFFICER MILLER: Okay. Well, thank you.

18 So I am going to reject the offer of proof in Employer
19 Exhibit 1, which is an offer of proof, will be placed in the
20 rejected exhibit file.

21 **(Employer Exhibit Number 1 Rejected)**

22 HEARING OFFICER MILLER: As I stated earlier, the Regional
23 Director's February 18th order precluded the Employer from
24 litigating the appropriateness of the unit. And to the extent
25 that it seeks to do that, I'm rejecting it for that reason. So

1 Employer Exhibit 1 is rejected.

2 Mr. Model, did you want to move on to the next exhibits?

3 MR. MODEL: I just want to make sure everybody got the
4 email that we sent out with the exhibits.

5 HEARING OFFICER MILLER: I have them.

6 MR. SPEAR: Yes, I have it.

7 MR. MODEL: Okay. I don't think it's come from my end,
8 but I know what they are.

9 So Employer Exhibit 2(a) is the statement of position for
10 the Mount Hope store.

11 HEARING OFFICER MILLER: Sir, that's the Rochester store.
12 Whoever --

13 MR. MODEL: I'm sorry, I'm looking at the wrong one. I
14 apologize.

15 So 2(a) is for the College Avenue store.

16 HEARING OFFICER MILLER: And if you don't mind, I'll just
17 connect the case number for it, just so it's clear which one
18 it's for. So that's for 03-RC-289793.

19 MR. MODEL: Thank you. Employer 2(b) is for the Commons
20 statement of position.

21 HEARING OFFICER MILLER: That one is 03-RC-289805.

22 MR. MODEL: And Employer 2(c) is the Meadows statement of
23 position.

24 HEARING OFFICER MILLER: Okay. Case number there is
25 03-RC-289796.

1 MR. MODEL: And the other exhibits are the same as the
2 exhibits that were -- that we moved for admission, and that you
3 rejected and put into the rejected exhibit file in the prior
4 hearing. But it's Employer's 3 through 8, which includes -- 3
5 and 4 are two affidavits. Employer 5 is a letter from me to
6 you, Mr. Miller. Employer's 6 is an email from you, Mr.
7 Miller, to the parties, and Employer's 7 is the company's
8 response to the Workers United Motion. And Employer 8 is the
9 Workers United Motion.

10 HEARING OFFICER MILLER: Okay. Thank you.

11 So I am rejecting each of these exhibits for the
12 statements of position 2(a), 2(b), and 2(c). I'm rejecting
13 them because, pursuant to the order issued by the Regional
14 Director on February 18th, they were untimely served on the --
15 on the Union, and the Employer is precluded from entering them
16 into evidence here.

17 And to the extend my ruling in the case, we litigated a
18 little bit earlier. Employer Exhibits 3 through 8 are being
19 rejected because we're not litigating the timing of the filing,
20 and whether or not preclusions are appropriate in this
21 proceeding, because that was already addressed by the Regional
22 Director's order on February 18th.

23 So each of the Employer's Exhibits 1 through 8 are
24 rejected. They'll be retained the rejected exhibit file.

25 **(Employer Exhibit Numbers 2(a) through 2(c), and 3 through 8**

1 **Rejected)**

2 HEARING OFFICER MILLER: Any questions about that from
3 either party?

4 MR. SPEAR: No.

5 MR. MODEL: No.

6 HEARING OFFICER MILLER: Okay. Mr. Model, anything else
7 you'd like to present at this time?

8 MR. MODEL: All right. No.

9 HEARING OFFICER MILLER: Okay.

10 Mr. Spear, anything you would like to present, in terms of
11 evidence or offers of proof --

12 MR. SPEAR: No, no --

13 HEARING OFFICER MILLER: -- that you --

14 MR. SPEAR: -- other than to point out we have not had
15 occasion to litigate Ithaca stores yet, until this proceeding.
16 And for the reasons that I stated in the last hearing, there is
17 nothing in the offered proof to show that the situation, with
18 regard to Ithaca Starbucks stores, is any different from the
19 facts found in the five decisions in directions of election
20 that have been issued throughout.

21 HEARING OFFICER MILLER: Okay. So I think we'll move
22 forward, then. Thank you for providing that, Mr. Spear.

23 So does the Petitioner wish to proceed to an election in
24 any alternate unit, if the unit sought is found to be
25 inappropriate by the Regional Director or the Board?

1 MR. SPEAR: Yes, we do.

2 HEARING OFFICER MILLER: Okay. Any outstanding
3 stipulations that I have not received are hereby received. And
4 now, I'd like to explore election details, in the event an
5 election is directed. Parties stipulated in Board Exhibit 2
6 that the elections are to be conducted by mail, if they were
7 directed.

8 To kind of save time, rather than ask you all about each
9 individual part, the parties indicated in that prior proceeding
10 that the method by which the mail-ballot elections were
11 conducted by the region, in terms of the amount of time the
12 ballots were out, that sort of thing -- in previous cases
13 involving these parties.

14 Is it still the parties' positions that that sort of set
15 up is appropriate and --

16 MR. SPEAR: Yes, it --

17 HEARING OFFICER MILLER: -- for the parties? Okay.

18 MR. SPEAR: Those procedures were fine, as far as we're
19 concerned.

20 MR. MODEL: Yes.

21 HEARING OFFICER MILLER: Okay. So I have a couple of
22 questions about that. I do have to ask, does either party
23 anticipate the need for the notices of election or the ballot
24 to be translated into a language other than English?

25 MR. SPEAR: Again, I don't know. I'll have to get back to

1 you.

2 MR. MODEL: No.

3 HEARING OFFICER MILLER: Okay. Again, if that does come
4 up, please alert the Regional Director as soon as possible.

5 MR. SPEAR: Yes.

6 HEARING OFFICER MILLER: Is the Petitioner willing to
7 waive any portion of the ten-day voter list requirement?

8 MR. SPEAR: Yes, I do.

9 HEARING OFFICER MILLER: And how much, sir?

10 MR. SPEAR: All of it.

11 HEARING OFFICER MILLER: Okay.

12 All right. So Mr. Model, what is the name and contact
13 information of the onsite representative to whom the notices of
14 the election should be sent out to?

15 MR. MODEL: Sure. Same name as previously. Mallori,
16 M-A-L-L-O-R-I, Coulombe, C-O-U-L-O-M-B-E, regional director.
17 Email, mcoulombe@starbucks.com. And the notice should be sent
18 to the 722 South Meadow Street, Ithaca, NY 14850 store.

19 HEARING OFFICER MILLER: Okay. Is that true if there are
20 three elections directed instead of one? They should all be
21 sent to the Meadow Street address?

22 MR. MODEL: Yes.

23 HEARING OFFICER MILLER: Okay, thank you.

24 Anything else the parties think the Regional Director
25 should be aware of before scheduling an election or elections



1 in this matter?

2 MR. SPEAR: No.

3 HEARING OFFICER MILLER: All right. So the Regional
4 Director will issue a decision in this matter as soon as
5 practicable. We will immediate transmit the document to the
6 parties and their designated representatives by email, fax, or
7 by overnight mail, if neither an email address nor a fax number
8 is provided.

9 If an employer -- I'm sorry, if an election is directed,
10 the Employer must provide the voter list. It should be timely
11 filed and served. The voter list must be received by the
12 Regional Director and the parties at the end of the direction
13 within two business days after the issuance of the direction,
14 unless a longer period, based on extraordinary circumstances,
15 is specified in the decision and direction of election.

16 Statement of service onto all parties must be filed with
17 the Regional Director when the voter list is filed. The Region
18 does not serve the voter list on the parties.

19 Are the parties willing to waive the right to file briefs
20 and provide an oral statement in leu of briefs?

21 MR. SPEAR: I --

22 MR. MODEL: No.

23 MR. SPEAR: Because they're not --

24 MR. MODEL: We're going to write a -- we're going to write
25 a brief.

1 HEARING OFFICER MILLER: Okay. All right. So briefs are
2 going to be due at 11:59 p.m. on Tuesday, March 1st, 2022.
3 Briefs may be filed by e-filing on the Board's website, by
4 mail, or by hand delivery, but cannot be filed by fax. And
5 again, the Agency prefers e-filing of those sort of documents.

6 The parties are reminded that they should request an
7 expedited copy of the transcript from the court reporter. Late
8 receipt of the transcript will not be grounds for an extension
9 of time to file briefs, if the Regional Director receives such
10 a request from the parties.

11 Is there anything further before the hearing is closed?

12 MR. SPEAR: No.

13 HEARING OFFICER MILLER: Okay --

14 MR. MODEL: No.

15 HEARING OFFICER MILLER: All right. The hearing is now
16 closed.

17 **(Whereupon, the hearing in the above-entitled matter was closed**
18 **at 11:57 a.m.)**

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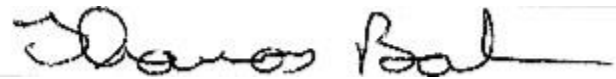
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C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom videoconference, before the National Labor Relations Board (NLRB), Region 3, Case Numbers 03-RC-289801, 03-RC-289802, Starbucks Corporation and Workers United, held at the National Labor Relations Board, Region 3, 130 S. Elmwood Ave., Suite 630, Buffalo, New York 14202, on February 22, 2022, at 12:06 p.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



THOMAS BAKER

Official Reporter

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

Starbucks Corporation,

Case Nos. 03-RC-289801

03-RC-289802

Employer,

and

Workers United,

Petitioner.

Place: Buffalo, NY (Via Zoom Videoconference)

Dates: February 22, 2022

Pages: 1 through 19

Volume: 1

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

In the Matter of:

STARBUCKS CORPORATION,

Employer,

and

WORKERS UNITED,

Petitioner.

Case Nos. 03-RC-289801
03-RC-289802

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **THOMAS MILLER**, Hearing Officer, at the National Labor Relations Board, Region 3, 130 S. Elmwood Ave., Ste. 630, Buffalo, NY 14202, on **Tuesday, February 22, 2022, 12:06 p.m.**



1 A P P E A R A N C E S

2 On behalf of the Employer:

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E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**Board:**

B-1 (a) through B-1 (m)

5

5

B-2

6

6

Employer:

E-2 (a) and E-2 (b)

11

Rejected

E-3 through 8

11

Rejected

P R O C E E D I N G S

HEARING OFFICER MILLER: Okay. So the hearing will be in order. This is a formal hearing in the matter of Starbucks Corporation, case number 03-RC-289801 and 03-RC-289802 before the National Labor Relations Board. The hearing officer appearing for the National Labor Relations Board is Thomas Miller.

All parties have been informed of the procedures of formal hearings before the Board by service of a description of procedures in certification and decertification cases with the notice of hearing. I have additional copies of this document for distribution if any party wants more.

Will Counsel please state their appearances for the record? And again, we'll start with the Petitioner.

MR. SPEAR: Samuel L. Spear, Spear Wilderman, P.C., 230 South Broad Street, Philadelphia, PA 19102. With me is Sarah Tarlow and Vlad Kachka, who are attorneys at my firm. And also --

MR. MODEL: Also --

MR. SPEAR: I'm sorry. Also with me -- I should have said this before, is Georgia Bramhall (phonetic), who is a paralegal in my firm, who's been watching, too.

MR. MODEL: And on behalf of the Employer, Alan Model with firm Littler Mendelson, and co-counselors Marie Duarte and Sam Wiles.

1 HEARING OFFICER MILLER: Okay, thank you. Are there any
2 other appearances?

3 MR. SPEAR: And Ian Hayes is also representing the Union.
4 I don't think he may be back in.

5 HEARING OFFICER MILLER: Okay. Are you comfortable
6 proceeding without him?

7 MR. SPEAR: Yeah. I'm sure he'll be here in a minute.

8 HEARING OFFICER MILLER: Okay. Are there any other
9 persons, parties, or labor organizations in hearing room who
10 claim they fit in this proceeding? Then let the record show no
11 response.

12 I now propose to receive the formal papers. They have
13 been marked for identification as Board's Exhibit 1(a) through
14 1(m), inclusive Exhibit 1(m) being an index and description of
15 the entire exhibit.

16 This exhibit has already been shown to all parties. Are
17 there any objections to receiving this exhibit into the record?

18 MR. SPEAR: No.

19 MR. MODEL: No, no.

20 HEARING OFFICER MILLER: Okay. Hearing no objection, the
21 formal papers are received into evidence.

22 **(Board Exhibit Numbers 1(a) through 1(m) Received into**
23 **Evidence)**

24 Are there any motions to intervene in these proceedings to
25 be submitted to the hearing officer for ruling by the Regional

1 Director at this time?

2 Are the parties aware of any other employers or labor
3 organizations that have an interest in this proceeding?

4 MR. SPEAR: No.

5 MR. MODEL: No.

6 HEARING OFFICER MILLER: Okay. The parties in this
7 proceeding have executed a document which has been marked as
8 Board Exhibit 2. That exhibit contains a series of
9 stipulations, including, among other items, that the Petitioner
10 is a labor organization within the meaning of the Act. There
11 is no content barred in any of the involved facilities, and the
12 Employer meets the jurisdictional standards of the Board.

13 Is there any objections to receive Board Exhibit 2?

14 MR. MODEL: No.

15 MR. SPEAR: No.

16 HEARING OFFICER MILLER: Okay. Hearing no objection,
17 Board Exhibit 2 is received into evidence.

18 **(Board Exhibit Number 2 Received into Evidence)**

19 HEARING OFFICER MILLER: Are there any petitions pending
20 in other regional offices involving other facilities of the
21 Employer?

22 MR. SPEAR: Yes, there are.

23 MR. MODEL: Yes.

24 HEARING OFFICER MILLER: Okay. And this is kind of a -- I
25 stumbled over this a couple of times today. But is there

1 anything in those petitions that is necessary to address on the
2 record in this proceeding today?

3 MR. SPEAR: Not more than what we've said.

4 MR. MODEL: Agreed.

5 HEARING OFFICER MILLER: Okay. All right. Are there any
6 pre-hearing motions made by any party that have not been
7 addressed by the Regional Director that need to be addressed at
8 this time?

9 MR. SPEAR: No.

10 MR. MODEL: No.

11 HEARING OFFICER MILLER: Okay. The parties are reminded
12 that prior to the close of the hearing, we're going to discuss
13 election details. Obviously, we've done this a couple of times
14 in hearing today, but we're not going to litigate the manner or
15 the method or any of those sort of things related to the
16 election, just so the parties know. But at the end of the
17 hearing, we're going to be prepared to discuss that.

18 The parties have also been advised that the hearing will
19 continue from day to day, as necessary, until completed, unless
20 the Regional Director concludes extraordinary circumstances or
21 otherwise.

22 Regarding the issues to be litigated in this hearing, I
23 have already kind of explained in depth with some clarifying
24 questions from Counsel in the first hearing we held today in
25 case 03-RC-289785. How I've been instructed to proceed in

1 terms of precluding the issues raised in the Employer's
2 statement of position of how we're going to conduct the
3 hearing, the parties have indicated that they're comfortable
4 with just replicating that arrangement this hearing, without
5 the need to restate it completely.

6 Is that accurate?

7 MR. SPEAR: Yes.

8 MR. MODEL: Yes, it is.

9 HEARING OFFICER MILLER: Okay. All right.

10 So as we've done twice today, Mr. Model, do you want to
11 explain the offer of proof and -- that's been marked as
12 Employer Exhibit 1?

13 MR. MODEL: Sure. Employer Exhibit 1 contains an offer of
14 proof, as to the people who would have testified, had we been
15 permitted to present the case -- litigate the appropriateness
16 of the petition for units.

17 HEARING OFFICER MILLER: Okay.

18 Mr. Spear, anything you'd like to add that you hadn't
19 already stated in one of the previous records that we've done
20 today?

21 MR. SPEAR: Yes. Just briefly to add to what I've said --
22 and I'm trying to locate the -- just as I've said -- just as
23 I've said in the last hearing, the offer of proof that has been
24 presented, with regard to the Rochester market, again,
25 underscores what we have been saying. Specifically, paragraph

1 1(d) of that offer of proof -- I'm sorry -- 1(c) of that offer
2 of proof states that if called to testify, the Starbucks
3 witnesses would say the following. All the stores in the
4 market follow the same exacting Starbucks operational protocols
5 and personal policies, as set forth in detail in the Buffalo 1
6 and Buffalo 2 hearings.

7 As we've said, that type of evidence has now exhaustively
8 been examined, and decisions have been issued with regard to
9 that kind of evidence. And five decisions so far have
10 confirmed that that is insufficient to overcome the Employer's
11 heavy burden to show that the single unit, which has been
12 proposed, as to labor relations purposes, been obliterated by
13 some larger type of organizational structure or practice.

14 Also, with regard to the offer of proof, with regard to
15 Dr. Thompson's testimony, if called to testify, he would,
16 again, very surprisingly not talk about the essential fact that
17 all five other decisions I've focused on, which is the
18 percentage of shifts and hours that borrowed partners have
19 worked in the petition for stores. That is omitted, and it's
20 omitted for a reason, we think.

21 It raises the unavoidable adverse inference that the facts
22 and the percentages, if offered by Starbucks, would be harmful
23 to Starbucks' position in this case -- and in fact, would be
24 consistent with what all five decisions that have been issued
25 already have stated. Which is that the amount of Employer

1 interchange is insufficient to rebut the single-site
2 presumption.

3 HEARING OFFICER MILLER: Is there anything you want to add
4 to that --

5 MR. MODEL: No --

6 HEARING OFFICER MILLER: -- what Mr. Spear said?

7 MR. MODEL: We strongly disagree with a nonexpert's
8 interpretation of an expert's -- what his testimony would be.
9 And we will address that.

10 HEARING OFFICER MILLER: Okay. All right. So consistent
11 with how I've written the two previous statements today, I'm
12 going to reject the Employer's offer of proof and reject
13 Employer's Exhibit 1, and will be placed in the rejected
14 exhibit file.

15 **(Employer Exhibit Number 1 Rejected)**

16 HEARING OFFICER MILLER: I know I said earlier that, hey,
17 we're just going to follow what I said earlier, but I do need
18 to briefly state that we're precluding the Employer from
19 raising any issues that it -- and litigating any issues that it
20 raised in its statement. I need to make that explicit for the
21 record here. I don't think I did that earlier, so I'm
22 repeating it now.

23 Based on the Regional Director's order, I'm precluded
24 from -- I'm instructed that the Employer is precluded from
25 raising issues regarding the appropriateness of the Union,

1 based on the late files and late sort of statements of
2 position. Just to be clear, that's the reason I am rejecting
3 this offer of proof and rejecting Employer Exhibit 1.

4 Okay. So the Employer, if you'd like to go ahead and talk
5 about the remained of the exhibits you intend to present?

6 MR. MODEL: Sure. Employer 2(a) is the Mount Hope store
7 statement of position, and Employer 2(b) is for the Palazzo
8 Plaza statement of position. Those are the two petitions in
9 this case.

10 All right. And Employer 3 through 8 are the same exhibits
11 that we have attempted to move into evidence in the prior two
12 hearings that we've had today. Employer's 3 and 4 are the two
13 affidavits from Littler attorneys. Employer 5 is the letter
14 from myself to you, Mr. Miller. Employer 6 is the email from
15 you, Mr. Miller, to the parties. Employer 7 is the company's
16 response to the Workers United motion, and Employer 8 is the
17 Workers United motion.

18 HEARING OFFICER MILLER: Okay. And so, consistent with my
19 other rulings today, I'm going to reject the Employer's offer
20 of these exhibits.

21 **(Employer Exhibit Numbers 2(a), 2(b), 3 through 8 Rejected)**

22 HEARING OFFICER MILLER: The statements of position are
23 being rejected because I was instructed by the Regional
24 Director that they were not timely filed and served, and
25 that -- so, they should not get into evidence because we're not

1 litigating the timing or the appropriateness of the Employer's
2 filing those statements of position in this hearing, because it
3 was addressed in the Employers -- I'm sorry -- the Regional
4 Director's February 18th order rejecting Exhibits 3 through 8
5 on those grounds. And again, being consistent with the
6 approach we've taken in the three hearings we've had today.

7 All right. Mr. Model, anything further that the Employer
8 plans to present?

9 MR. MODEL: The only other issue -- and you may ask for it
10 later on -- is with regard to are there any other issues around
11 scheduling an election. We can deal with it later, if you
12 like. But as far as documents go, that's all there are.

13 HEARING OFFICER MILLER: I would like to deal with that
14 later --

15 MR. MODEL: Okay.

16 HEARING OFFICER MILLER: -- just for my own mental well-
17 being.

18 So Mr. Spear, is there anything you'd like to present, in
19 terms of offer of proof or anything along those lines?.

20 MR. SPEAR: No, again, other than to note you -- Region 3
21 hasn't had a chance to consider stores in Rochester yet. But
22 for all the reasons that we've stated, the fact that these
23 stores are in Rochester, rather than Buffalo, Ithaca, or -- or
24 Arizona, or Washington State or anywhere else doesn't matter.
25 It doesn't affect employees' rights or -- or expectation that

1 they can, and will, exercise the rights that the Act grants
2 them. So that's all.

3 HEARING OFFICER MILLER: Okay, thank you. So all
4 outstanding stipulations that I have not received are hereby
5 received.

6 Does the Petitioner wish to proceed to an election in an
7 alternate unit, if the unit sought is found to be inappropriate
8 by the Regional Director or the Board?

9 MR. SPEAR: Yes, we do.

10 HEARING OFFICER MILLER: All right. So election
11 details -- I know the parties stipulated that the mail-ballot
12 election is appropriate.

13 Mr. Model, I assume this is where you'd like to make a
14 statement about the timing of a mail-ballot election?

15 MR. MODEL: No, we're fine, as we have said, with regard
16 to the way that the Region has used that type of cadence for
17 mail-ballot election. The issue here is that the Mount Hope
18 store is going to be closed for three months starting in
19 approximately less than a week. And so that's -- that's one of
20 the two petitioned-for stores. That's store number 7310.

21 HEARING OFFICER MILLER: Okay. Mr. Spears, do you --
22 other than --

23 MR. SPEAR: Um-hum.

24 HEARING OFFICER MILLER: -- discussion of how we've
25 handled the cadence of the mail ballots in the past, is there

1 anything you'd like to add about the -- the method of the
2 election? How it's going to be conducted?

3 MR. SPEAR: No.

4 HEARING OFFICER MILLER: Okay. All right. Are there any
5 other facts that the Regional Director should be aware of
6 before scheduling an election for the earliest practical date
7 in this case, should one be directed?

8 MR. MODEL: Not more than what I just said.

9 HEARING OFFICER MILLER: Okay. All right. Does either
10 party anticipate the need for the notice of election and
11 ballots to be anticipated to a language other than English?

12 MR. MODEL: No.

13 MR. SPEAR: I told you before I was unsure, but in the
14 meantime, people have advised me that there is no need for
15 another language notice in this case or the other two cases,
16 either.

17 HEARING OFFICER MILLER: Okay, thank you.

18 Mr. Model, what is the name and contact information for
19 the on-site representative to whom the Regional Director should
20 transmit the notice of election, if one is directed?

21 MR. MODEL: Sure. Mallori, M-A-L-L-O-R-I, Coulombe,
22 C-O-U-L-O-M-B-E, regional director, mcoulombe@starbucks.com.
23 And it should be sent to the store at 2750 Monroe Avenue,
24 Rochester, NY 14618.

25 HEARING OFFICER MILLER: Okay. So should notice of



1 election for both stores be sent to the one location if one --
2 if we direct two different elections?

3 MR. MODEL: Yes.

4 HEARING OFFICER MILLER: Okay.

5 MR. MODEL: One store's going to be closed.

6 HEARING OFFICER MILLER: Fair enough. So the Regional
7 Director will issue a decision in this matter as soon as
8 practicable, and we'll immediately transmit the documents to
9 the parties and their designated representatives by email, fax,
10 or by overnight mail, if neither an email address nor fax
11 number is provided.

12 If an election is directed, the Employer might provide the
13 voter list. It should be timely filed and served. The voter
14 list must be received by the Regional Director and the parties
15 within two business days after the issuance of the direction,
16 unless a longer period, based on extraordinary circumstances,
17 is specified the decision in direction of election.

18 Certificate of service on all parties must be filed with
19 the Regional Director when the voter list is filed. The Region
20 will no longer serve the voter list.

21 Is either party willing to waive the right to file briefs
22 and provide an oral statement in leu of briefs?

23 MR. MODEL: No, the Employer intends to -- the Employer
24 intends to file a brief.

25 HEARING OFFICER MILLER: Okay. I assume the -- the Union

1 is not willing to waive their right to file briefs, correct?

2 MR. SPEAR: The brief will be due one week from today,
3 right?

4 HEARING OFFICER MILLER: Yes, that's my very next
5 sentence, sir. It's due at 11:59 p.m. on Tuesday, March 1st,
6 2022. It's on the brief --

7 MR. SPEAR: And I don't want to -- I don't want to beat a
8 dead horse, but --

9 HEARING OFFICER MILLER: Okay.

10 MR. SPEAR: -- but really, if Starbucks is serious about
11 designating its employees as its partners, which it should be,
12 it's -- it's certainly not acting like a partner. It wants to
13 get another week in to delay things by another week, and I have
14 a problem with it. And I know that Mr. Model will disagree,
15 and I know he thinks he has legitimate issues to raise. I
16 think that the path of the litigation so far has shown there
17 are no more legitimate issues that can or should be raised in
18 this case. Technology and -- and technological advancements
19 has not changed the scope of employees' rights under the
20 National Labor --

21 MR. MODEL: There's really no question of rhetoric in
22 these hearings, and I don't need to respond to it.

23 HEARING OFFICER MILLER: Okay. So neither party is
24 waiving their right to file briefs in the --

25 MR. SPEAR: No, I guess I'll be forced to file something.



1 HEARING OFFICER MILLER: Okay. All right. Is there
2 anything further before the hearing closes?

3 MR. MODEL: No.

4 HEARING OFFICER MILLER: Okay.

5 MR. SPEAR: If --

6 HEARING OFFICER MILLER: Just one more thing.

7 MR. SPEAR: If you allow --

8 HEARING OFFICER MILLER: The parties -- yes?

9 MR. SPEAR: I forget. I'm losing it. Did you ask if I
10 wanted to waive the ten days in this proceeding?

11 HEARING OFFICER MILLER: That is an excellent question. I
12 did not, sir. I apologize for that. Are you willing to waive
13 any portion of the ten-day requirement of having the voter
14 list?

15 MR. SPEAR: Yes, I am.

16 HEARING OFFICER MILLER: Okay. How much to it, sir?

17 MR. SPEAR: All of it.

18 HEARING OFFICER MILLER: Okay. The parties are reminded
19 that they should request next the copy of the transcript from
20 the court reporter. Late receipt of the transcript will not be
21 grounds for an extension of time to file briefs.

22 And does that raise anything further with either party?

23 MR. SPEAR: I don't think so.

24 HEARING OFFICER MILLER: Okay.

25 MR. MODEL: Yes.

1 HEARING OFFICER MILLER: All right.

2 Well, if there's nothing further, the hearing is going to
3 be closed.

4 **(Whereupon, the hearing in the above-entitled matter was closed**
5 **at 12:23 p.m.)**

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C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom videoconference, before the National Labor Relations Board (NLRB), Region 3, Case Numbers 03-RC-289801 and 03-RC-289802, Starbucks Corporation and Workers United, held at the National Labor Relations Board, Region 3, 130 S. Elmwood Ave., Ste. 630, Buffalo, NY 14202, on February 22, 2022, at 12:06 p.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



THOMAS BAKER

Official Reporter